

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of )  
 ) AO 2005-10  
Representative Howard L. Berman and ) Agenda Document No. 05-36  
Representative John T. Doolittle by )  
counsel, Judith L. Corley and Brian G. )  
Svoboda )

CERTIFICATION

I, Mary W. Dove, recording secretary of the Federal Election Commission open meeting on August 18, 2005 do hereby certify that the Commission took the following actions in the above-captioned matter:

1. Failed in a vote of 1-5

to approve draft Advisory Opinion 2005-10, as contained in Agenda Document No. 05-36.

Commissioner Thomas voted affirmatively for the decision. Commissioners Mason, McDonald, Smith, Toner, and Weintraub dissented.

2. Failed in a vote of 3-3

to direct the Office of General Counsel to prepare an advisory opinion indicating that because ballot initiatives and referenda are not in connection with an election under Section 441i(e), Section 441i(e) does not apply to the activities identified by the requestors and Representatives Berman and Doolittle may solicit funds for such activities outside the amount limitations and source prohibitions of the Act.

Commissioners Mason, Smith, and Toner voted affirmatively for the decision. Commissioners McDonald, Thomas, and Weintraub dissented.

3. Decided by a vote of 5-1

to instruct the Office of General Counsel to prepare an answer that the requestors may undertake the activity that they asked about, based on the theory that ballot initiatives are not per se in connection with an election, and that in the circumstances presented in this request, where the requestors are not establishing, maintaining, financing, or controlling the ballot initiative committees, and where it is an off-year election, that the Commissioners do not believe that this presents a situation in connection with an election; further, there could be a footnote inserted which states that some Commissioners would adopt a broader approach but it is not before them in this request, and, therefore, the response would be "yes."

Commissioners Mason, McDonald, Smith, Toner, and Weintraub voted affirmatively for the decision. Commissioner Thomas dissented.

4. Decided by a vote of 6-0

to reconsider the previous 5-1 vote outlined in Number 3.

Commissioners Mason, McDonald, Smith, Thomas, Toner, and Weintraub voted affirmatively for the decision.

5. Decided by a vote of 6-0

to direct the Office of the General Counsel to prepare a draft response to the requestors, to be circulated informally to the Commission, which states that under the facts and circumstances presented in the request the Commission has concluded that the activity is permissible.

Commissioners Mason, McDonald, Smith, Thomas, Toner, and Weintraub voted affirmatively for the decision.

Attest:

August 19, 2005  
Date

Mary W. Dove  
Mary W. Dove  
Secretary of the Commission